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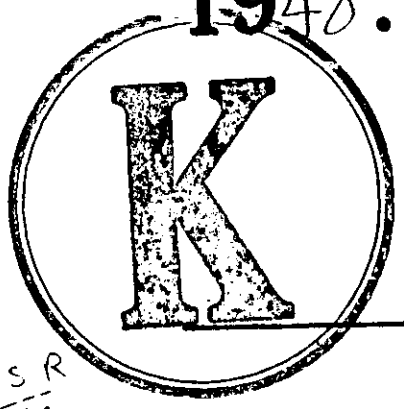
1948.

File No. Sales Tax Tribunal / 48

Legal **DEPARTMENT**

A **BRANCH**



F.S.R. 2/6

Subject:— P 17E

Papers relating to the Bombay Sales Tax Tribunal appeals and applications.

C O N T E N T S.

Legal Department File No.Sales Tax Tribunal/48.

Sr.No-	R.I/O.No.	Subject.	pages.
		Papers relating to the Bombay Sales Tax Tribunal (appeals and applications)	
1.	O.No.6225/3-7-48. O.No.7301/27-7-48 (L. & J.H.Sanctioning appearance of M/s.Little & Co.,	Re:Revision Application No.1/48. D.C.Rashumar & Co/o.Deccan Motorstores,Sholapur. Vs. The Commissioner of Sales Tax Bombay.	
	R.I.No.11074/1-9-48. O No.9581/8-10-48 (G.A.L.D. sanctioning holding of the conference by the Adv.Genl.)	Question whether the amount collected by the dealer separately as sales tax on each sale forms part of the sale price so as to be included in the gross turnover of the dealer.	1 - 18

E.A.N.28/6/
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29/5

K.S.R.
29/5.

MEMORANDUM OF INSTRUCTIONS.

This is a Revision application before the Bombay Sales Tax Tribunal by Mr.D.C.Bachuwar trading under the name of Deccan Motor Stores, Sholapur, against an order dated 10th March 1948 passed in appeal by the Dy. Commissioner of Sales Tax, Bombay Province.

2. The applicant furnished the return of his turnover in Form VI for the quarter ending 31st March 1947 showing his gross turnover to be Rs.44,288/13/6. The Sales Tax Officer, Sholapur determined the gross turnover at Rs.44,990/14/9 which included an amount of Rs.1317/9/6/ which had been collected by the dealer on various sales as a separate charge for sales tax and had not been included in the gross turnover shown in his return. The applicant contended that this amount should not be included in the gross turnover on the ground that it had not formed part of the sale price as defined in clause (h) of section 2 of the Bombay Sales Tax Act, 1946. The Deputy Commissioner of Sales Tax rejected this argument and confirmed the order of the assessment passed by the Sales Tax Officer. Against that order, the applicant has gone in revision before the Sales Tax Tribunal. The applicant's contention is that the amount of sales tax collected on each sale and shown as such in each Bill or cash-memo separately cannot be included in the sale price as defined in clause (h) of section 2 and that the buyer pays such amount as tax and not as part of the valuable consideration for the article sold. The question for consideration is whether the amount collected by the dealer separately as sales tax on each sale forms part of the sale price so as to be included in the gross turnover of the dealer.

3. The dealer's turnover means, under section 2(j),

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an aggregate of the amounts of sale prices received and receivable by him in respect of sale or supply of goods. Under clause (h) of section 2, sale price means the amount payable to the dealer as valuable consideration for the sale or supply of goods, less any sum allowed as cash discount according to trade practice but including any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof, other than the cost of freight or delivery or the cost of installation where such cost is separately charged. According to the definition, therefore, whatever amount the buyer pays to the dealer must be regarded as sale price within the meaning of clause (h) of section 2. The fact that the dealer recovers from the buyer a distrinct amount by way of sales tax over and above what he calls the net price, does not make any difference, because obviously, there would be no sale if the buyer refused to pay the amount charged as sales tax. The buyer pays such amount to the dealer for no other consideration than the sale or supply of goods to him, and the whole amount paid by the buyer is the consideration for which the dealer sells the goods. If the dealer's contention, that the amount collected by him from the buyer separately as sales tax is not a part of the sale price, be true, then there is no provision whereunder he can recover from the buyer the amount of sales tax qua tax. The incidence of the tax is not upon the buyer nor does the Act constitute the dealer an agent of Government for the collection of the tax from the buyer. Under sections 5 and 6 of the Act, it is dealer who is primarily liable to Government for the sales tax. The dealer is not of course prevented by any provision of the Act, express or implied, from recovering the amount of the tax from the buyer but whether he does so or not is entirely his own affair with which Government is not concerned. Taking an extreme case, a dealer who is otherwise liable to pay sales tax under sections 5 and 6, cannot escape his liability by saying that he did not recover the amount of the tax by adding it to the net price. The practical effect of the dealer passing

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on the burden of the tax to the buyer is only an increase in price. Therefore, the contention that the amount collected separately by way of sales tax should be excluded from the gross turnover, has no substance.

4. The applicant might refer to clause (b) of sub-section (2) of section 6 of the Act before its amendment of Bombay Act XXIV of 1948. That clause allows a deduction of 3% of the balance of the gross turnover remaining after making deductions allowed under clause (a). He might argue that as this deduction is not exactly equal to the sales tax charge (the tax would be Rs.3/2/- on a sale of Rs.100/-), it was intended to compensate the dealer for the labour and costs involved in the collection of the tax and not to cover the tax itself which the dealer recovered from the buyer. He might try to support that ~~xxxg~~ argument by reference to the amended section 6, Rules II and III whereof allow deductions respectively of 1/33rd and 1/17th of the balance of gross turnover remaining after deductions allowed under Rule I, and contend that it is only the amended section that enables the dealer to pay the sales tax on the net price charge and that therefore, the deduction of 3% under the old section does not justify the inclusion of sales tax in the amount of the gross turnover.

5. The answer to that argument would be that both under the old and new section 6, this deduction is in theory intended to enable the dealer to pay the tax calculated on the net amount expected to remain with him after paying the tax and not on the gross price which he charges, which is expected to include some provision for the tax element, whether such tax element is charged separately or is covered by the price charged. Under the old section, the deduction was rounded of to 3% to avoid fractional calculations. The new section

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is a refinement to make the deduction exactly equal k to the tax charged but the effect under both the sections was intended to be the same.

It may also be added that whatever may be the intention of the legislature in providing for this deduction under section 6, the question now at issue should be determined according to the meaning of "sale price" as defined in section 2(h) and this would not be affected even if no deduction of this kind were allowed under section 6, or the rate of deduction were quite unrelated to the rate of tax.

Law Officers.
Engagement of the Advocate General, Bombay and Messrs.Little and Company, Solicitors in Revision Application No.1. of the 1948 before the Bombay Sales Tax Tribunal.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No.7031,
Bombay Castle, 27th July 1948.

Unofficial Reference from the Finance Department No.0495/33 STP, dated the 8th June 1948, forwarding papers underlying Revision Application No.I of 1948 before the Bombay Sales Tax Tribunal for necessary action and engagement of the Advocate General in the Matter.

Unofficial Reference to Mr.Gidwani Commissioner of Sales Tax, Bombay Province, No.6047, dated the 29th June 1948.

Unofficial Reference from the Commissioner of Sales Tax, Bombay Province, No.369/4, dated the 29th June 1948.

Letter to Messrs. Little and Company, Solicitors to Government, No. 6225, dated the 3rd July 1948, forwarding a memorandum of instructions in the matter and requesting them to engage the Adgocate General Bombay, on behalf of the Commissioner of Sales Tax, Bombay Province.

Endorsement by Messrs.Little and Company, Solicitors to Government No.8104, dated the 6th July 1948, requesting that the delivery of the brief to the Advocate General, Bombay, on behalf of the Commissioner of Sales Tax, Bombay Province on a fee of 50 G.Rs. per day and their remuneration on the basis of the scales fixed by the High Court Rules as between Solicitor and client for long causes with the exception that they should be entitled to charge Rs. 30/- per hour for attendance may be sanctioned.

RESOLUTION:- Sanction is accorded to the appearance of Messrs.Little and Company, before the Bombay Sales Tax Tribunal in Revision Application No. 1 of 1948 on payment to them of remuneration on the basis of the scales fixed by the High Court Rules as between Solicitor and client with the exception that they will be paid a fee of Rs. 30 per hour for attendance at the hearing of the application.

2. Sanction is also accorded to instruct the Advocate General Bombay, to appear for the Respondent at the hearing of the application on payment of a fee of 50 G.Rs. per day.

By order of the Governor of Bombay,

Sd. R. M. MEHTA,

Assistant Secretary to Government.

To
The Finance Department,
The Accountant General, Bombay,(through F.D),
The Advocate General,Bombay,
Messrs.Little and Company, Solicitors to Government, Bombay.
The Commissioner of Sales Tax, Bombay Province.

B.K.N.28/5/58

LITTLE & CO.,
SOLICITORS & NOTARIES PUBLIC. CENTRAL BANK BUILDING,
ESPLANADE ROAD,
BOMBAY.

12th July 1948.

No.AW/JJ 8418.

The Remembrancer of Legal Affairs,
Office of the Remembrancer of Legal Affairs,
Bombay.

Sir,

Re: Sales Tax Appeals.

With reference to your office memorandum dated the 30th instant forwarding therewith copies of two orders, one in respect of the appeal application dated 31st January 1948 of Messrs. Swadeshi Mills Co., Ltd., of Bombay and the other in respect of the Revision -- Application dated 1st December 1947 of Mr.Madhav Tuljram Meethabhai Sheth of Kolaba District, we have the honour to request you to let us know whether Government desires us to represent the Commissioner of Sales Tax in the above two matters also and, if so, whether we would also engage the Advocate General for the purpose.

Yours faithfully,

LITTLE & CO.,

LITTLE & CO.,

SOLICITORS & NOTARIES PUBLIC. CENTRAL BANK BUILDING,

ESPLANADE ROAD,

BOMBAY.

13th August 1948

No.AW/K. 10129.

The Remembrancer of Legal Affairs,
Office of the Remembrancer of Legal Affairs,
Bombay.

Sir,

Re:Sales Tax Appeals.

May we remind you of our letter of the 18th ultimo and request you to kindly send us your reply thereto at an early date?

Yours faithfully,

LITTLE & CO.,

K.K.N.28/8/56

4C.

L. D.

Submitted.

2.Please see the Solicitors letter on pages 25-27 ante.

The two orders of the Deputy Commissioner of Sales Tax, B.P. in the Swadeshi Mills Co. Ltd., and Mr.Madhav Muljaram Seth were received as pps. in Lachmvala case and therefore were forwarded to Messrs. Little & Co., It is not known whether P.D. wants to take any action regarding these x two cases. Before a reply is issued to the solicitors. The papers may be shown to P.D. as to whether they propose any steps to be taken on these two orders.

Sd/- 18/8

U.R. to R.D.No. 7908 dated 18-8-48.

Finance Department S.T.Branch.

With reference t para 2 of the L.D. note, dated 18-8-48, The Commissioner S.T. may be requested to state whether the Advocate General is to be evaged to represent the Commissioner S.T. in the two cases mentioned therein.

Sd/ 7/8.

U.O.R. to the Commissioner S.T.Dated 20/8/

Offices of the Commissioner of S.T.

The spare copies of the orders passed by me in connection with(1) the application for revisions from Mr.Madhav Tuljaram Sheth and (2) the appeal application from Messrs.Swadeshi Mills were sent by me to the Solicitor to Government informally and it was not the intention to arrange for the appearance of the Advocate General in these two cases.

Sd/- 16/9

U.O.R. No.369/9 to F.D. dated 17-9-48.

Finance Department S.T.Branch.

Submitted U.R. to the O.M. dated 20-8-48.

The Deputy Commissioner S.T's remarks may be shown to the L.D. for information.

Sd/ 18/9 Sd/

U.O.R. to the L.D. Dated 20-9-48.

E.I.H.28/5/58

4C.

18thx August 48.

AW/K

10301.

The Commissioner of Sales Tax,
Old Custom House,
Fort, Bombay.

Dear Sir,

Revision Application No.1 -- ----
D.C. Kachuwar
vs.
The Commissioner of Sales Tax.

The above matter came up for hearing before th Sales Tax Tribunal on the 14th instant when, after hearing arguments of Counsel on both the sides, the Tribunal dismissed the Revision Application and confirmed the order passed by the Commissioner of Sales Tax, Bombay Province.

Yours faithfully,

Sd/- Little & Co.

Solicitors to the Government of Bombay

Bombay, 18th August 1948.
No.AW/K 10302

Copy forwarded with compliments to the Remembrancer of Legal Affairs.

Sd/- Little & Co.,

Solicitors to Government.

E.K.N.28/5/56

4C.

Submitted.

2. Please see mm.n. dated 18.8.1948. The Commissioner of Sales Tax to whom the papers were forwarded by the F.D. States that the orders passed by him in connection with (1) the revision application from Madhav Tuljaream Seth and (2) the appeal application from M/S Swadeshi Mills were sent to the Solicitors to Government informally and that there was no intention to arrange for the appearance of the Advocate General in these cases. M/S.Little & Co., at whose instance the inquiry was made may be informed accordingly. The draft letter in this behalf is put up for approval and signature.

3. The correspondence from M/S.Little & Co. on page 29 ante may be perused. The Sales Tax Tribunal has confirmed the order of the Commissioner of Sales Tax.

4. Please also see the letter of M/S.Little & Co. dated 31-8-1948. Action on it would be taken separately.

Sd/ T.J. Chaudhary.
22/9

A.S. Ld. 22/9

K.K.N.28/5/56

4C.

No. 9045.
Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 23rd September 1948.

To
Messrs. Little & Co.,
Solicitors to Government.

Subject: Sales Tax Appeals.

Gentlemen,

With reference to your letter No.A.W.JJ/8418 dated 13-7-1948 and subsequent reminder I have the honour to state that no action on the copies of order referred to in your letter under reference was contemplated by Government.

Yours faithfully,

Sd. P.H. Lad.

For Remembrancer of Legal Affairs.

E.K.M.28/8/56
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LITTLE & CO.,
SOLICITORS & NOTARIES PUBLIC.

CENTRAL BANK BUILDING,
ESPLANADE ROAD,
BOMBAY.

31st August 1948.

No.AW/K.10935.

The Remembrancer of Legal Affairs,
Bombay.

Dear Sir,

Revision Application No.1. of 1948
D. C. Bachuwar C/o. Deccan Motor Stores.
Vs.
The Commissioner of Sales Tax.

We refer you to our letter of the 6th instant. in the above matter a conference has been held by the Advocate General and in anticipation of the Government sanction we marked 2 G.Ms. for conference in addition to 50 G.Ms. marked on the brief of Advocate General. In the circumstances we have to request you to kindly move the Government to sanction the marking of two G.Ms.

Yours faithfully,
Little & Co.,

Solicitors to Government.

E.K.N.28/5/56
4C.

L. D.

Submitted.

2.By G.R.L.D.No. ~~7301~~ 7031 dated 27-7-48 Government accorded sanction interalia to the payment of a fee of 50 G.Ms. per day to The Advocate General on behalf of the Commissioner of Sales Tax in Revision Application No.1 of 1948 before the Bombay Sales Tax Tribunal. The action of the Government Solicitors in making a fee of 2 G.Ms. for conference in anticipation of Government sanction may be approved. Formal orders may issue after U.R. to F.D.

R.L.A. Sd P.M.Lad.

2nd/9

U.R. to R.D.No. 9120 dated 25-9-48.

Finance Department.

The proposed made by the L.D. may be agreed to.

Sd/- 28/9

U.R. to the L.D. dated 26-9-48.

E.K.N.28/5/56

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Law Officer

Engagement of the Advocate General, Bombay and Messrs. Little & Co., Solicitors in Revision Application No.1 of 1948 before the Bombay Sales Tax Tribunal.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No.9381.

Bombay Castle, 5th October 1948.

Read Government Resolution, Legal Department, No.7031 dated the 27th July 1948.

Letter from Messrs. Little and Company, Solicitors No.AW/K.10935, dated the 31st August 1948 stating that a conference has been held by the Advocate General and that in anticipation of Government sanction they marked 2 G.Ms. for the conference and requesting sanction for the same.

RESOLUTION:- Sanction is accorded to the holding of the conference by the Advocate General on a fee of 2 G.Ms.

By order of the Governor of Bombay.

R.M.Mehta.

Assistant Secretary to Government.

To

The Finance Department,

The Accountant General, Bombay (through F.D.),

The Advocate General, Bombay,

Messrs. Little & Co., Solicitors to Government, Bombay.

The Commissioner of Sales Tax, Bombay Province.

E.N.H.28/5/56

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